

Appl. No. 10/790,311  
Amdt. Dated: September 12, 2006  
Reply to Office Action of: March 13, 2006

### **REMARKS / ARGUMENTS**

For the convenience of the Examiner and clarity of purpose, Applicant has reprinted the substance of the Office Action in *10-point bolded and italicized font*. Applicant's arguments immediately follow in regular font.

#### *Election/Restriction*

1. *Applicant's election without traverse of Group II, claims 8-26, in the reply filed on July 29, 2004 is acknowledged.*

*Upon additional consideration, a further restriction is required for the following patentably distinct species of the claimed invention:*

*Species I. Drawn to Figures including 1 and 2, and including at least claims 10-16; and*

*Species II. Drawn to Figures 3 and 4 and including at least claims 17-21.*

*Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 8, 9, and 22-26 are generic.*

*During a telephone conversation with the attorney of record on February 28, 2006, a provisional election was made with traverse to prosecute the invention of Group I, claims 1-6. Affirmation of this election must be made by applicant in replying to this Office action. Claims 17-21 are withdrawn from further consideration by the Examiner, 37 CFR 1.142(b) as being to a non-elected invention.*

Applicant concurs that claims 8, 9, and 22-26 are generic to all embodiments disclosed in the application. Applicant submits that there are many more claims pending in the application that are generic as well.

In response to the Examiner's request, Applicant affirms the telephonic election to prosecute the invention of Species I, drawn to Figures including Figures 1 and 2, and including at

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least claims 10-16.

***Claim Objections***

2. ***Claim 13 is objected to because of the following informalities: It appears that claim 13 should depend on claim 12 instead of claim 11. For the purposes of the examination, claim 13 is considered to depend on claim 12 in this Office action. Appropriate correction is required.***

Claim 13 has been amended herein in order to correct the informalities pointed out by the Examiner and bring the claims into compliant form. Claim 13 is now believed to be in condition for allowance.

***Claim Rejections—35 USC § 112***

3. ***Claims 8-16 and 22-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.***

***With respect to claim 8, there is no antecedent basis for “the first stationary plate” in line 6.***

***With regard to claim 9, the phrase, “the apertures define an open area in the stationary plate of” should be changed to “the sum of the open areas of the apertures in the stationary plate is” because the former is not clear and unnecessarily confusing. Additionally, the phrase “1/3 of a surface area” (line 2) is indefinite. It should be corrected to “1/3 of the total surface area” as disclosed in the specification on page 13.***

Claims 8 and 9 have been amended herein, in accordance with the Examiner's suggestions. Claims 8-16 and 22-26 are now believed to be in condition for allowance. Applicant respectfully requests that the rejections of claims 8-16 and 22-26 under 35 U.S.C. § 112, second paragraph be withdrawn.

*Claim Rejections -35 USC § 102*

**4**        *Claims 8-12, 14-16, 22-24 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Clements (US 3,113,735)..*

*With regard to claim 8, Clements discloses a food waste disposer including:*

- 1. a rotatable member (80, 99) coupled to a rotational source (45);*
- 2. a stationary plate (62) disposed adjacent the rotatable member (80, 99) and defining a plurality of apertures (74) therethrough; and*
- 3. wherein at least one first portion (99) of the rotatable member (80, 99) shears over (bottom of 99) at least some of the apertures (74) in the first stationary plate to shear the food waste.*

*With regard to claim 9, Clements discloses the sum of open areas of approximately 1/3 of the total area of the stationary plate (62) in Figure 2.*

*With regard to claim 10, Clements discloses a rotatable plate (80) having a central portion attached to a rotational source (45) in Figure 1.*

*With regard to claim 11, Clements discloses a rotatable plate (80) and a stationary plate (62) situated on a plane in Figure 1.*

*With regard to claim 12, Clements discloses a stationary plate (62) with a central opening (66) in which the rotatable plate (80) is positioned for rotation.*

*With regard to claim 14, Clements discloses one first portion (99) of the rotatable member (80, 99) comprises an impact member (99) having a surface or edge (bottom of 99) sliding on the stationary plate and passing adjacent the apertures (74) in the stationary plate.*

*With regard to claim 15, Clements discloses an impact member (99) comprising a lug fixedly or movably attached to the rotatable plate (80) in Figure 2.*

*With regard to claim 16, Clements discloses a separation distance of about 2 mm (Figure 1). It is noted that Clements may not disclose a separation distance of 2 mm, but Clements discloses a separation distance of about 2 mm.*

*With regard to claims 22 and 24, Clements discloses a stationary ring (36) having an inner wall disposed about the stationary plate (62), wherein at least a second portion (79) of the rotatable member (80, 99) comprises an impact member (79) having an end (79) for passing adjacent the inner wall for grinding food waste.*

*With regard to claim 23, Clements discloses a stationary ring (36) comprising a plurality of teeth (60 and 61) formed on the inner wall.*

*With regard to claim 26, Clements discloses an impact member (99) comprising a lug movably attached to the rotatable member (80).*

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Applicant respectfully traverses this rejection of claims 8-12, 14-16, 22-24 and 26. For a prior art reference to anticipate in terms of 35 U.S.C. § 102, each and every element as set forth in the claims must be found, either expressly or inherently described, in a single prior art reference. *In re Schreiber*, 128 F.3d 1473, 1477 (Fed. Cir. 1997). Inherent anticipation requires that the missing descriptive material is necessarily present, not merely probably or possibly present in the prior art. *In re Robertson*, 169 F.3d 743, 49 USPQ.2d 1949 (Fed. Cir. 1999).

Clements does not teach, show, or suggest every element of the presently claimed invention. As pointed out by the Examiner, Clements teaches only a food waste disposer that includes a retainer (86) having radially-extending wings (87 and 88) undercut with recesses, and impellers 98 and 99 mounted under each wing of the retainer by a pivot pin 100, 101 (see, FIG. 3), which only allows for the impellers 98 and 99 to swivel in their location. No mention or suggestion is made by Clements of the use of impact members or lugs having an elongated throughhole for attachment to a rotating member or plate, which allows the impact members to both swivel and slide during their operation.

The present invention describes a food waste disposer for more efficiently shredding and grinding food waste, wherein in one aspect the food waste disposer comprises a rotatable member (110) and a stationary member or plate (130) disposed adjacent the rotatable member in the grinding section (14) of the disposer, with one or more impact members or lugs (120) attached to the top surface of the rotatable member (110). According to the specification, and as shown in FIGS. 1A and 1B, the impact members/lugs (120) are attached to the rotatable plate via

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an elongated throughhole in the lug, the throughhole allowing the impact members/lugs to both swivel and slide relative to the rotatable plate (110) during operation of the disposer, such movements of the impact members producing shearing or cutting forces as the members swivel and slide back-and-forth relative to the rotatable plate (110). This aspect is recited in independent claim 8 as amended herein.

As such, because independent claim 8 as amended herein is directed to an apparatus which includes an impact member comprising an elongated throughhole movably attached to the rotatable member of the food waste disposer by fastening posts, wherein the elongated throughhole in the impact member allows the impact member to slide and swivel during the normal operation of the food waste disposer, and because Applicant has found no disclosure or teaching in Clements of such an impact member comprising an elongated throughhole that is capable of both rotational (swivel) movement and sliding movement back-and-forth, reconsideration of this rejection in light of these arguments is appreciated.

Similarly, because independent claim 8, upon which claims 9-12, 14-16, 22-24 and 26 depend, has been distinguished above regarding Clements, it is believed that these claims are deemed allowable by depending on allowable independent claims.

Applicant respectfully requests that the rejections of claims 8-12, 14-16, 22-24 and 26 under 35 U.S.C. § 102 be withdrawn.

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***Claim Rejections -35 USC § 103***

***5. Claims 16 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clements (US 3,113,735).***

***With regard to claim 16, alternatively, while Clements discloses the separation distance in the range of 0 to about 2 mm in Figure 1, Clements does not specifically recite it. Examiner takes an Official Notice that the use of a separation distance in the range of 0 to about 2 mm is obvious to an ordinary skilled in the art. Therefore, it would have been obvious to one skilled in the art at the time the invention was made to teach Clements to use a separation distance in the range of 0 to about 2 mm, as such is well known and obvious in the art.***

***With regard to claim 25, Examiner takes an Official Notice that use of fixed lug is obvious to an ordinary skilled in the art. Therefore, it would have been obvious to one skilled in the art at the time the invention was made to teach Clements to use a fixed lug, as such is well known and obvious in the art. Furthermore, Applicant has disclosed that Applicant's invention works equally well with either a fixed lug or a movable lug.***

Applicant respectfully traverses this rejection of claims 16 and 25. Claims 16 and 25 depend from independent claim 8, which Applicant contends is patentable as amended herein and as detailed above. Consequently, no amendment is made herein to claims 16 or 25 in response to this rejection. Reconsideration of this rejection in light of these arguments is appreciated.

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### **Conclusion**

Of the 106 original pending claims in this application, claims 8, 9 and 13 are currently amended. Claims 1-7 and 27-106 have been cancelled in response to a previous election. Claims 107 and 108 have been added. Claims 17-21 have been withdrawn consistent with the election of February 28, 2006. With this response, claims 8-16, 22-26 and 107-108 are now pending in this application. Applicant respectfully submits that each claim is patentable, as detailed herein. A notice of allowance is respectfully requested.

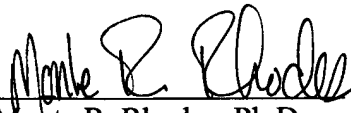
Support for the amendment to claim 8 can be found in the specification as originally filed on page 9, paragraph [0033] through page 10, paragraph [0034], and in the figures, particularly FIG. 1B, among other places. Support for newly added claims 107 and 108 can be found in the specification as originally filed on pages 12-13, paragraphs [0040] through [0041].

Applicant does not believe that any additional fees are due at this time. However, should any fees under 37 C.F.R. §§ 1.16 to 1.21 be required for any reason relating to this document, the Commissioner is hereby authorized to deduct the requisite fees necessary to make this and related papers timely and effective from Locke Liddell & Sapp LLP Deposit Account No. 12-1322, referencing matter number 021902-139US.

Applicant thanks the Examiner for his consideration and effort on this matter and submits that this application is now in condition for allowance. Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

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Respectfully submitted,

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